

Reinforcing citizens' participation by reforming
European commission public consultations

Raphael Kies

Uni.lu

The European project has probably never been so fragile as today. The Brexit referendum and the proliferation of anti-EU parties shattered the notion of ineluctable integration in the European Union. The inability of reaching a coherent policy to face the refugee and euro crisis strongly point to the absence of a European solidarity. The frequent declarations by the US president Trump putting into question the US commitment to automatically defending NATO allies if they are attacked further weaken the defenses capacity of Europe. More generally, the dominant picture of EU governance remains that of an opaque and technocratic process that involves civil servants and EU officials in a closed policy network, rather than a transparent process of deliberation and decision-making, open to broad participation of all those who have a stake in the outcome. In this chapter, I would like to draw some lessons from the failed attempts of democratization of the EU by proposing some guidelines that should be followed in order to envision a realistic deliberative and inclusive transformation of the EU-decision making process. By following their spirits, I will propose an ambitious renovation of the public consultation regime of the EU Commission, the only institutionalized system of public consultation enshrined in the EU Treaties that however most of the citizens are not aware of. This is an idea that I first presented in at the conference at the World Bank (Kies 2016) and that has since then been discussed and presented in the report commissioned by the European Economic and Social Committee (Lironi and Peta 2017), the European Parliament (Korthagen et al. 2018) and is presently discussed within the European Court of Auditors.

1. The failed attempts of the EU to involve lay citizens

Conscious of the difficulties of reconnecting with the citizens, many EU leaders have very recently reiterated the need to radically reform the EU machinery and project. Among these reforms, the idea of widely consulting the population before starting any reform emerged as a necessity. The most visible initiative in this sense is the Citizens convention on the future of Europe that Emmanuel Macron launched during his famous speech at the Sorbonne in 2017 (Macron 2017). This large debate on the future of Europe was supposed to offer a new dynamic to Europe and to counteract the populist sentiments in view of the 2019 European elections. From the viewpoint of the method, the citizens' convention would avoid the past mistake of *"asking at the last minute – gripped by fantasies and incomprehension – whether "yes" or "no" to an opaque text written in secret"*. Concretely, the consultations were organized both nationally and locally, the format of which was determined by each member state. While I agree with Macron that consulting the citizens in a deliberative way is probably the best method to involve the citizens in the EU decision-making process and to reinforce the EU legitimacy, there are at least several mistakes that were committed in the execution of the consultation. I will for the moment just mention them: the consultation lacked thematic structure and focus, it was not neutral and transparent, it was not consistent across the member states, participants were by no means representing the general EU population, its impact was not clear and, lastly, it was not embedded in the decision-making process. To put it bluntly, it was a partisan and improvised consultation that does not contribute to cure the European democratic malaise. What is most unfortunate is that the EU already funded several interesting and relevant methods for consulting their citizens from which valuable lessons could have been derived. More than ten years ago, in 2005, when the constitutional treaty was rejected by the French and Dutch referenda, the EU promoted several action plans aiming at increasing citizens' information and involvement in Europe (Yang 2013). This has led to the appearance of a large variety of innovative consultative experiments at different geographical levels (national, cross-border and pan-European), including virtual and face-to-face communication, deliberative consultation and polling. Two particularly ambitious consultations involving a representative sample of citizens of the different member states were the European Citizens Consultation (hereinafter, ECC09) and Europolis. ECC09 was grounded on a complex procedure inviting a large number of citizens from all the EU member states to debate and elaborate propositions online and face-to-face on the "social and economic future of Europe". Participants that were

selected (for the face-to-face national consultations) or auto-selected (for the online phase) were invited in a first phase to elaborate propositions and, in a second phase, to agree on a list of opinions that would be shared by most (Kies et al. 2013). The second case, *Europolis*, was the deliberative opinion poll that convened to Brussels a sample of 348 citizens from the 27 member states to discuss and express their opinions on “immigration” and “climate change”. Differently from ECC09, the citizens who participated at *Europolis* were not asked to elaborate and to agree on original propositions but to express their opinions of a pre-defined questionnaire before, during and after a balanced and informative discussion in a pan-European context (Isernia et al. 2013). What these experiments of public participation share is the idea of exploring in a highly qualitative way the priorities and preferences of European citizens, to (re-)connect them with the rather elite-driven political sphere in Brussels and, more ambitiously, of including lay citizens in the EU decision-making process. In a recent analysis that reviewed several of these experiments, it resulted that these innovative processes are interesting and valuable from a civic and academic perspective: participants regularly changed their views on the topics they had debated on and improved their perception of the EU legitimacy and belonging. While positive for the participants they fall short to reach the broader public, despite the considerable efforts of its organizers to attract the attention of the (social) media. The main problems is that they had no tangible impact on decision, that they treated issues that are too general, and that media hardly cover EU affairs unless they are existential (e.g. Greek crisis, migrant crisis, Brexit). In other words, while these participative experiments proved to be innovative and highly valuable to elaborate concrete processes of citizens participation at the EU level, the fact a decade later they have not been implemented as a permanent process of participation suggest that they still face too many legal, political and cultural hurdles (Kies and Nanz 2013).

A valid and legitimate method for consulting the citizens can only emerge if it overcomes this experimental phase and draws lessons from the past. Based on the analysis of the past consultations, I have elaborated several guidelines for a successful process of citizens’ consultation at the EU level.

2. Six - not too ambitious - rules for promoting a more inclusive and deliberative EU participation

Rule 1: Any new measure aiming at reinforcing citizens' legitimacy of the EU decision process should not imply transformation and complexification of the existing decision-making system.

The nature and functioning of the EU decision-making systems is already too complex to be correctly grasped by its citizens. The establishment of a new institution aiming at promotion citizens deliberation, although theoretically desirable, would further add complexity the EU decision-making system. This is why I argue that it might be premature to introducing a new citizens' assembly to improve a direct representation of the citizens at the EU level (see Graham Smith chapter). This is all the more so insofar as such transformation would imply treaties reforms, which require the signatures and the ratification of all member states, a highly unlikely scenario in the existing climate of populism, nationalism and fear. In any case, I would argue that any fundamental change in the byzantine system of the EU, such as the introduction of a citizens assembly, should only occur in the context of a global reform and should be gradual (Burks and Kies 2019) .

Rule 2: A deliberative form of inclusion should be privileged to a purely aggregative form of inclusion.

The only recent major reform in term of participative democracy is the introduction in 2012 of the European Citizen Initiative (ECI), a purely aggregative participative tool that allows one million citizens from at least seven member states to submit a proposal to the Commission that falls under policy competences belonging to the EU. But six years after the introduction of the ECI, it can hardly be called a success story. So far only four initiatives – out of the more than 80 introduced - have reached the one million threshold and no single citizens' initiative has been directly transposed into an EU legislative act. As a consequence, the level of acceptance of the citizens'

initiative appears to have steadily declined since its introduction because hardly anything concrete has changed in terms of policy (Hierlemann and Huesmann 2018). The ECI is not only problematic from an efficiency perspective, but also from a deliberative democratic perspective. First, the ECI has a limited potential to include lay citizens who are not interested in EU affairs both for the registration and collection phases. Rather, it concerns in the first-place organized groups that have sufficient financial and human resources to gather one million signatures in the required 12 month period. Second, the ECI is not specifically designed to promote a truly pan-European discursive space. In reality, most of the time the ECI proposal are out of the radar of the national media and tend to be restrained to national elites interested in the EU affairs. Third, the ECI cannot be considered as a more legitimate participative instrument than a deliberative consultation process for influencing the EU decision-making process for the fact of gathering one million signatures (out of 500 million EU citizens) under the impulsion of well-organized groups does not constitute a strong democratic to justify its impact. I argue that the latter are more legitimate in so far as they attempt to implement solutions leading to qualitative and inclusive interactions with a representative sample of citizens. As also suggested by Hierlemann and Huesmann (2018), the ECI would need to be complemented citizens' juries, made up of citizens from the entire EU who have been selected in a random and largely representative fashion. The later could serve as a check to see whether an ECI conforms with the opinion of the wider public.

Rule 3: Citizen participative procedure should be permanently included in the decision-making process and have clear and consistent rules to be effective.

So far, EU deliberative citizens' consultation were experimental (see examples supra). They generally occurred one or two times and had no tangible impact. I argue that a citizens' consultative procedure should become permanent and follow five cumulative conditions in order to be considered a legitimate both by the citizens and the rulers. institutional:

- 1) Transparency: the process should be based on fair and transparent rules;
- 2) Consistency: the same rules should be applied in each member state so that the national consultations produce comparable results;
- 3) Continuity: the participation should be repeated in time, i.e. it cannot be limited to one event;

4) Independence: the consultation should not respond to a partisan/economic agenda and should be conducted by an independent authority.

5) Responsiveness: the authority responsible for the final decision should at least justify its choice to take (or not) the citizens' input into consideration.

Rule 4: Participative procedure should be inclusive.

Probably the greatest challenge when promoting participation at the EU level is to find ways for involving a large majority of citizens who are detached from the EU and are not interested in learning more about it. This is a fundamental problem because a combination of ignorance and fear leads generally to a rejection of the EU, and Brexit is a very good example of it. A deliberative form of inclusion implies not only that a consultation is open, but also that it is representative of the population. The ECC09 experience, among others, suggest that these different objectives can be simultaneously reached by combining self-selection inclusion with mini-publics. The self-selection form of inclusion entails that all of the people interested should have a possibility to express their opinions and have a guaranty to be heard. This can be done by opening the participation through e-consultation platforms, as did ECC09 through national online consultative platforms. However, this is not sufficient as generally self-selected participants tend to be already highly interested and have strong opinions. A more progressive form of inclusion requires that people who would not spontaneously take part in the consultation but whose opinions could contribute to the outcome of the consultation should be encouraged to do so. For this second type of inclusion different methods could be applied to attract specific categories of the population, such as the usage of gaming for the young generations (Sgueo 2018). However the most efficient method to a guaranty that the plurality of ideas on a given topic are expressed and confronted, is to elaborate decentralized forms of "participation by invitation" through mini-publics (Kohler-Koch 2015). Ideally, the ideas emerging from the self-selected participants should be somehow linked with the discussion occurring among the invited participants. In the case of ECC09, the most successful ideas that emerged from the open online phase were then discussed in the face-to-face mini-publics. Lastly, the traditional media, the social media as well as different stakeholders should be associated in the process in order to increase the visibility and impact of the consultation.

Rule 5: The issues discussed by the citizens should be EU-wide but concrete and bring added value.

The choice of topics for consultation should trigger a EU-wide interest and cover concrete issues in order to obtain opinions and proposals that can influence decision-makers. If, as this was the case so far, consultations are on broad topics such as the “social and economic future of Europe”, the “immigration policy in Europe”, the “climate change”, the “future of Europe”, the opinions expressed by the citizens tend to be general and do not bring added value for decision-makers. As a consequence, their impact is weak or absent compared the opinions expressed by well-organized interest groups. Since it is not possible to organize decentralized and deliberative consultations on all the EU matters, there should be an authority that selects the topics on which people should be invited to deliberate. The composition of this authority as well as the criteria of selection should be defined with great care in order to guaranty the neutrality, the efficiency and legitimacy of the process.

Rule 6: EU deliberative procedures should be advisory in nature on final decision.

No matter how well and how often citizens’ deliberative consultations are organized on a given issue, they will never reach a sufficient level of legitimacy for justifying the adoption of a decision that would concern a large group, not to mention all EU citizens.ⁱ Their authority should therefore be “just” consultative, which is not the same as an absence of power. Indeed, the better mini-publics are organized (by representing the diversity of opinions, by providing relevant information and an ideal discursive setting), the more people they involve, and the more visibility they reach, the more influence they are likely to have on a decision. In such conditions, it is realistic to believe that the opinions expressed by the citizens could contribute to counter-balance the influence of the interest groups in Brussels.

3. Reforming European commission public consultations

In this final section, I argue that a valuable place to convincingly apply these guidelines at the EU level is to introduce mini-publics within the context of the European Commission's public consultation website, previously known as "Your Voice in Europe". Originally designed to allow stakeholders to contribute to Commission initiatives, it has since evolved to become a broadly used consultation tool for stakeholders and citizens. This tool serves three purposes: 1.) allow the Commission to make use of external expertise and thus create better policies; 2.) ensure that EU actions are coherent and transparent; 3.) increase the EU's democratic legitimacy by giving citizens' greater voice in the decision-making process (Quiktatt 2011). Unlike other EU deliberative experiments, this consultation comes with minimal standards aiming to ensure that consultation is clear, inclusive, transparent, long enough (at least 12 weeks) and, more importantly, that the Commission provides feedback. The feedback requirement imposes three duties: a.) acknowledging receipt of contributions and publishing them; b.) publishing and displaying consultation results; c.) giving adequate feedback on how results were taken into consideration in the policy-making process (EC 2016).

Yet the Commission struggles to provide feedback to individual contributions within a reasonable time. A May 2017 report (Lironi and Peta 2017) shows that the Commission provided a collective feedback in roughly 65% of public consultations processed in 2016. This delay owes to the high number of consultations to process (around 100 per year), the high number of responses for certain consultations, and the chronic lack of human resources facing the EU. Likewise, lay citizens are almost absent from the consultative process, implying that the process is essentially dominated by civil society organizations, public authorities and research centers (Badouard 2013). Another important problem is that the EU consultation system does not provide a discursive arena where participants could exchange and build common proposals, since participation is allowed either in the form of an open comment box or in the form of online surveys in a multi-choice format (Marxsen 2015). It does not foster the emergence of European public around key issues, and does neither promote a transnational political identity. In other words, citizen participation most often proved superficial and with little social uptake. Although the reasons for this are well known, i.e. topic complexity, lack of interest in EU affairs, the procedure's low visibility, I contend that the

strong imbalance in favor of organized groups can be tackled by introducing decentralized mini-publics (in the different member states) deliberating on select Commission initiatives. If correctly designed and implemented, this process would enable diverse voices to be heard (through socio-demographic and geographical representativeness) when new EU initiatives are elaborated and would therefore contribute to meeting the three objectives of EU public consultations, largely shared with other institutions: better policy, coherence and transparency, democratic legitimacy. A valid introduction of the decentralized mini-publics, should define the 1) the method for selecting the participants to guaranty a good socio-demographic representation of the general population; 2) how the topic should be selected; 3) how the debates are organized; 4) how the larger public is included in the consultative process. In what follows, I briefly discuss these different aspects.

- *Selection of participants:* Concerning citizen selection and mini-public set-up, a decentralized consultation involving a limited number of citizens seems to be the best option in the EU context: A good example is the European Citizens' Consultations (Kies et al. 2013). In each territorial unit, mini-publics of 30 to 60 participants would be selected on the basis of representative socio-demographic criteria. To rationalize organizational and budgetary costs, the national Commission representation could host these mini-publics in the EU case. In other cases, one could appeal to decision-makers, and/or private foundations to provide funding.

- *Topic Selection:* As it will not be possible to organize citizens' consultations on all topics, a selection procedure should be introduced. The procedure followed by the Oregon Citizens Initiative Review could be (partly) followed (Gastil et al. 2014). In Oregon, an independent and mixed commission selects the citizens' initiative that should be the object of a citizen initiative review before the organisation of a referendum. It is composed of political representatives, facilitators and citizens who have participated to the citizens' initiative review of the precedent year. The commission selects the proposal that should be then discussed by a representative panel of ordinary registered voters on the basis of criteria reflecting the importance of the issues at stake (through its budgetary impact and whether it modifies the Oregon Constitution) and its feasibility (whether there are sufficient funds for organizing the panel). A similar method could be used for

selecting the EU Commission proposals to be submitted to citizens' review. However, as the EU decision-making process involved a large number of actors, this selection committee should be composed by citizens but also by political representatives of the bodies that are involved in the co-decision process (Commission, European Parliament and Council) as well as the consultative process of the EU (e.g. European Economic and Social Committee). Excluding them to participating from the beginning would strongly decrease the influence citizens could have on the final decision. The example of the Irish convention - that was composed by one third of political representatives and two third of citizens - convincingly suggests that differently from what might think at first sight, the involvement of politicians in the consultative process is not only necessary for guaranteeing its success but also beneficial for participants and the outcome of the consultation (Suiter et al. 2016).

- *Qualitative deliberation*: To prepare for deliberation, the mini-public would receive a briefing from both the interest groups supporting and rejecting the initiatives as well as neutral experts. Using these sources, their own values and third-party research, mini-public members would weigh the propositions' pros and cons by means of facilitation techniques enabling all viewpoints to be heard and points of consensus to be uncovered. Depending on the topic discussed, the session could run from one to several full days. Once deliberations are concluded, different viewpoints (pro and con), questions and recommendations for courses of action would be summarized in a national synthesis report to be made public and submitted to the Commission or legislature with the request to take an official, justified position.

- *Reaching the general public*: Important efforts should be made throughout the process to make the consultation accessible and visible. This might include promoting public events and deepening collaboration with national institutions, civil society organizations, schools, and national public media and social media. Following the example of the Oregon Citizens' Review Initiative, mini-public participants could be invited on traditional media to debate the topic and inform the public about this innovative consultation method. This would likely have a positive impact on a population which increasingly identifies with opinions expressed by other "ordinary" citizens over and against "professional politicians" or "bureaucrats".

Conclusion: A limited but potentially significant impact

Making the public consultation procedure of the Commission more inclusive and deliberative may not be the panacea for solving the multiples pathologies of the EU we listed in the introduction, but certainly constitutes one step in the right direction for reaching and decision-making process that is more transparent and responsive. If correctly implemented it allows citizens' voices to be heard when new EU rules are elaborated, a stage where generally only experts and interest groups are consulted. It is moreover a reform that - differently from many proposals that are disconnected from the reality of the EU - appears to be feasible as it does not require a transformation of the EU treaties and can be reasonably easily and rapidly be implemented thanks to an effective collaboration of the national representations of the Commission and the EP.

Bibliography

Romain Badouard. "Combining inclusion with impact on the decision? The Commission's online consultation on the European Citizens' Initiative" in *Is Europe Listening to Us? Successes and Failures of EU Citizen Consultations*, edited by Raphael Kies and Patrizia Nanz, 153-172. London: Routledge, 2013.

Gastil, John, Robert Richards, and Katherine Knobloch. "Vicarious Deliberation: How the Oregon Citizens' Initiative Review Influenced Deliberation in Mass Elections." *International Journal of Communication* 8(1), 62-89, 2014.

Hierlemann, Dominik, and Christian Huesmann. "More Initiative for Europe's Citizens." Policy Brief, Future of Democracy, Bertelsmann Stiftung, 2018

Christine Quittkatt. "The European Commission's Online Consultations: A Success Story?", *Journal of Common Market Studies* 49(3), 653-74, 2011

European Commission. 2016. "Better Regulation Guidelines", Commission staff working document.

Kies, Raphaël and Patrizia Nanz. "Citizens' Deliberation in Europe: An Introduction", in *Is Europe Listening to Us? Successes and Failures of EU Citizen Consultations*, edited by Raphael Kies and Patrizia Nanz, 1-14, London: Routledge, 2013.

Kies, Raphaël, Leyenaar Monique, and Kee Niemöller, "European Citizens' Consultation: A large consultation of a vague topic", in *Is Europe Listening to Us? Successes and Failures of EU Citizen Consultations*, edited by Raphaël Kies and Patrizia Nanz, 59-78, London: Routledge, 2013.

Kies, Raphael. "The seven golden rules to promote EU citizens consultation", paper presented at Fourth International Conference on Legislation and Law Reform, World Bank, Washington, 17-18 November 2016.

Kohler-Koch, Beate: Participation by invitation. Citizen engagement in the EU, in *Citizenship and Democracy in an Era of Crisis: Essays in honour of Jan W. van Deth* edited by Thomas Poguntke, Sigrid Roßteutscher, Rüdiger Schmitt-Beck and Sonja Zmerli, 206-223, London, New York: Routledge, 2015.

Korthagen, Iris, Van Keulen Ira, Hennen Leonhard, Aichholzer Georg, Rose Gloria, Lindner Ralf, Goos Kerstin and Nielsen Rasmus Øjvind, *Prospects for E-Democracy in Europe Science and Technology Options Assessment*. European Parliamentary Research Service. STOA, 2018.

Isernia Pierangelo, Fishkin James, Steiner Jürg and Danilo di Mauro, “Toward a European publicsphere—the EuroPolis Project”, in *Is Europe Listening to Us? Successes and Failures of EU Citizen Consultations*, edited by Raphaël Kies and Patrizia Nanz, 79–124, London: Routledge, 2013.

Lironi, Elisa and Daniela Peta, *EU Public Consultations in the Digital Age: Enhancing the Role of the EESC and Civil Society Organisations*, European Economic and Social Committee, 2017.

Macron, Emanuel, Speech on the new initiative For Europe, Discours de la Sorbonne, 2017
URL: <https://www.elysee.fr/emmanuel-macron/2017/09/26/president-macron-gives-speech-on-new-initiative-for-europe.en>

Marxsen, Christian, “Open Stakeholder Consultations at the European Level-Voice of the Citizens?” *European Law Journal* 21(2), 257–80, 2015.

Sguelo, Gianluca. 2018. *Games, Powers and Democracies*. Bocconi University Press: Milano.

Jane Suiter, David M. Farrell and Clodagh Harris, “The Irish Constitutional Convention: A Case of ‘High Legitimacy’?” in *Constitutional Deliberative Democracy in Europe*, Edited by Min Reuchamps and Jane Suiter, 33-52, Colchester, UK: ECPR, 2016.

Yang, Mundo. 2013. “Europe’s New Communication Policy and the Introduction of Transnational Deliberative Citizens’ Involvement Projects” in *Is Europe Listening to Us? Successes and Failures of EU Citizen Consultations*, edited by Raphael Kies and Patrizia Nanz, 17-34, London: Routledge, 2013.

¹ The public consultation on clock change in Europe launched by the European Commission is an interesting example of confusion concerning the type of impact it should have. For recall, the online consultation ran from 4 July to 16 August 2018 and received 4.6 million responses from all 28 Member States, the highest number of responses ever received in any Commission public consultation. According to the preliminary results, 84% of respondents were in favour of putting an end to the bi-annual clock change. The President of the Commission rapidly concluded in an interview with German broadcaster ZDF: "There was a public survey, millions answered are of the view that it's the summertime that should be used all the time in the future, and so it will be". Such a declaration is both misleading and unfair. It is misleading as it supposes that a public consultation would have a binding impact on the European Commission once it reaches a certain number of signatures. It is unfair as it ignores the fact that the people who participated at the consultation are not representative of the general population.